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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of Part 21 of the
Commission's Rules for the
Domestic Public Fixed Radio
Services

CC Docket No. 93-2

**COMMENTS
OF THE**

UNITED STATES TELEPHONE ASSOCIATION

Pursuant to the Commission's Notice of Proposed Rulemaking released on February 9, 1993,¹ The United States Telephone Association (USTA) respectfully submits these comments in the above-captioned proceeding.

A. BACKGROUND

Under the existing Part 21 rules, 47 C.F.R. § 21.3, applicants for Point-to-Point Microwave Radio Service (PPMS) are required to obtain Commission authorization prior to commencing construction of their proposed facilities. In the Notice, the Commission tentatively concluded that a PPMS applicant who satisfies certain Commission requirements could begin construction of its proposed facilities upon filing an FCC Form 494 (Application for a New or Modified Microwave Radio Station License), prior to grant of an authorization. The Commission reasoned that the revised rules may reduce

¹ See Notice of Proposed Rulemaking, Amendment of Part 21 of the Commission's Rules for the Domestic Public Fixed Radio Services, CC Docket No. 93-2, FCC 93-5, released February 9, 1993 (Notice).

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construction costs for PPMS and promote administrative efficiency.²

USTA strongly supports the Commission's efforts to simplify the licensing process and to provide for timely implementation of PPMS. It is a critical component of network microwave system operations, and the timely availability of PPMS facilities is essential to the initiation of telecommunications services to the public. The revised Part 21 rules will minimize unnecessary delays, but without compromising the Commission's regulatory responsibilities to oversee carrier frequency coordination and non-interference.

B. DISCUSSION

Below, USTA offers its comments on the proposed rule revisions:

1. Frequency Coordination

The Commission tentatively concluded that its proposal to eliminate the preconstruction authorization requirement for PPMS will not unduly infringe on the integrity of the frequency coordination process.³ USTA agrees with this tentative conclusion. To ensure that frequency coordination will be performed on a timely basis, Commission staff processing of the application and the initial notice and comment should take place prior to the commencement of PPMS operations, not after. Other users of the spectrum allocated to PPMS will then be able to compare prior coordinated frequencies with those requested in the application, and to resolve any frequency conflicts that may occur before PPMS goes into service.

² See Notice at 1-2.

³ See Notice at ¶ 14.

2. **Form 494**

To minimize the risk that an applicant engaged in pre-authorization construction might have, i.e. that its application would not ultimately be granted, or that the Commission may order its proposed facilities altered or even dismantled, the Commission has listed six specific circumstances under which preauthorization construction would not be permitted.⁴ The Commission invited comments as to whether PPMS applicants seeking modification of existing licenses pursuant to §§ 21.40 and 21.41 of the rules should similarly be treated.⁵

USTA endorses the proposal that applicants seeking modification of an existing license should be permitted to begin construction prior to grant of the modification, subject to the same restrictions applicable to pre-authorization construction for initial PPMS applications. Due to market demands, many local exchange carriers today frequently engage in construction activities to modify their existing facilities. The level of modification activities sometimes surpasses those occurring in new facilities. Moreover, exchange carriers are faced with the same time constraints, whether or not the construction is for a new facility or modification of an old facility. Thus, it is essential that the same flexibility (and restrictions) be accorded to PPMS applicants who seek to modify their existing facilities.

⁴ See Notice at ¶ 5.

⁵ id. at ¶ 7.

3. **Form 494A**

The Commission proposes to eliminate FCC Form 494A (Certificate of Completion and Construction) for PPMS applicants. The Commission also plans to eliminate the requirement that PPMS applicants notify the Commission upon completion of construction of their facilities. The proposed rules would permit a PPMS applicant to commence operations following grant of a conditional license or other authorization, without further notification to the Commission. The Commission reasoned that it has not found the information reported on FCC Form 494A to be essential for processing PPMS applications, and that existing rules provide sufficient enforcement mechanisms against applicants who do not construct or operate their facilities in a manner inconsistent with their authorizations.⁶

While USTA supports elimination of Form 494A for the reasons stated above, it believes that some form of notification to the Commission that a facility has been completed is essential. To assist in future facilities planning, it is vital that third parties be made aware of the completion of a facility and when it goes into operation. The Commission's public record on PPMS construction and the dates of completion should be kept current to provide that type of information. In any event, the notification process need not be formal or cumbersome. In fact, a simple statement or letter from the PPMS applicant stating the completion date addressed to the Commission's Secretary with a copy to the Chief of the Mobile Services Division, Common Carrier Bureau, should suffice.

⁶ See Notice at ¶¶ 16-17.

4. Reduction of Construction Time

The Commission proposes to reduce the construction period for PPMS applicants who hold conditional licenses from 18 months to 6 months.⁷ USTA does not believe that 6 months is a realistic time frame for construction of PPMS facilities. Considerable delays may occur due to weather conditions, the particular time of the year, and other unforeseen circumstances. In such event, the PPMS applicant must ask for a waiver or an extension of time from the Commission, a process which burdens Commission resources. USTA recommends that the construction period be reduced from 18 to 12 months, which represents a more reasonable time limit.

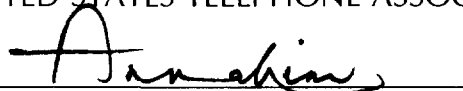
C. CONCLUSION

In light of the foregoing, USTA respectfully requests that its recommendations be adopted.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

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⁷ See Notice at ¶ 17.

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on March 16, 1993 copies of the foregoing Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.


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